IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.841 OF 2005
IN
SUIT NO.1849 OF 2004

Smita Sharad Shirsekar. ..Plaintiff.

V/s.

S.D.Damle & Ors. ..Defendants.

And

Mumbai Municipal corp. of Gr.Mumbai..Respondent.

Mrs.Nutan S.Moily, for Plaintiff.

Mr.Ajay Misar, for Defendant No.2.

Mr.Gaikwad for respondent corporation.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 3, 2005.

P.C. :

1. At 2.45 p.m. matter mentioned and taken up by consent. Heard counsel for the parties.

2. The only objection taken on behalf of the defendant No.2 and respondent corporation, across the bar is that the applicant cannot be impleaded as party defendant as his claim against the proposed defendant is barred by limitation. It is well settled that whether the claim is barred by limitation is a issue which will have to be

considered at the trial and that cannot be the basis for refusal for amendment, which is prayed for by the plaintiff.

3. Counsel for the defendant No.2 however, contends that law requires dismissal of the suit in terms of Order 7 Rule 11, if suit is barred by limitation. Indeed, the counsel is justified in making this submission. However, this submission overlooks the basic reason that question of limitation can be mixed question of fact and law. If it is a mixed question of fact and law, it can be agitated only at the trial, after evidence is led by the parties.

4. Viewed in this perspective, the chamber summons deserves to be allowed, as no other objection is forthcoming.

5. Accordingly, chamber summons is made absolute in terms of prayer clause (a),(b), and (c), leaving open question regarding claim against defendant barred by limitation, to be decided at the trial.

6. Amendment to be carried out within three weeks.